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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/735,869	12/16/2003	Scott V. Thomsen	3691-621	5454

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EXAMINER	
BLACKWELL RUDASIL, GWENDOLYN A	
ART UNIT	**PAPER NUMBER**
1775	

DATE MAILED: 01/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/735,869	THOMSEN ET AL.	
	Examiner	Art Unit	
	Gwendolyn A. Blackwell-Rudasill	1775	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *01 November 2004*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *34,35 and 51-53* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *34,35 and 51-53* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Oath/Declaration

1. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

> The oath or declaration is defective because:
> Non-initialed and/or non-dated alterations have been made to the oath or declaration. See 37 CFR 1.52(c).

Claim Rejections - 35 USC § 102

2. Claims 34-35 and 51-53 are rejected under 35 U.S.C. 102(b) as being a by United States Patent no. 4,368,945.

Regarding claims 34-35 and 51-53

Fujimori et al disclose an infrared reflecting laminated glass for an automobile having more than 70% visible light transmission that is comprised of a pair of glass sheets with films of polyvinylbutyral with an infrared reflecting film, which is being held synonymous with a low-E coating, comprised of tungsten oxide/silver/tungsten oxide to the glass sheets, (columns 1-2, lines 66-54). The laminated glass can have a visible ray transmission of 70-75%, (column 3, lines 22-36). Although, the haze is not disclosed by Fujimori et al, because the transmission of the laminated glass is within the range as exemplified by Applicant it would follow that the haze of the glass would also fall within the range as exemplified by Applicant, absent an evidentiary

showing to the contrary, the addition of the physical property does not provide patentable distinction between the claimed invention and the prior art of record.

Regarding claims 34-35

Claims 34-35 are product by process claims wherein the patentability of the product does not depend on its method of production. "If the product in the product by process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." *See MPEP 2113.* Absent an evidentiary showing to the contrary, the process limitations within claims 34-35 do not provide patentable distinction between the claimed invention and the prior art of record.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> *(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.*

4. Claims 34-35 and 51-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over United States Patent no. 4,368,945, Fujimori et al in view of United States Patent no. 6,312,808, Veerasamy et al.

Regarding claims 34-35 and 51-53

Fujimori et al disclose an infrared reflecting laminated glass for an automobile having more than 70% visible light transmission that is comprised of a pair of glass sheets with films of polyvinylbutyral with an infrared reflecting film, which is being held synonymous with a low-E

coating, comprised of tungsten oxide/silver/tungsten oxide to the glass sheets, (columns 1-2, lines 66-54). The laminated glass can have a visible ray transmission of 70-75%, (column 3, lines 22-36). Although, the haze is not disclosed by Fujimori et al, because the transmission of the laminated glass is within the range as exemplified by Applicant it would follow that the haze of the glass would also fall within the range as exemplified by Applicant. Fujimori et al do not disclose ion beam milling the glass surface located under the low-E coating.

Veerasamy et al disclose a glass substrate that can be used in a windshield, (column 1, lines 56-62), with a coating formed thereon. In order to increase the bonding of the coating to the substrate the substrate is first cleaned using an ion beam source, (column 11, lines 65-67). The ion beam source is used to remove impurities from the substrate surface. The action of the ion beam cleaning, which is being held synonymous with ion beam milling and ion beam etching, is physio-chemical in nature. Because of the nature of the interaction of the ion beam source with the substrate surface, the cleaning creates free radicals that can be reacted with other monomers yielding a substrate with specialized properties, (column 12, lines 27-36).

Fujimori et al and Veerasamy et al disclose inventions that can be used as automobile windshields. Although, Veerasamy et al do not specify that the ion beam cleaning should occur to the particular surface as exemplified by Applicant, it would have been within the skill of one in the art at the time of invention to modify any surface the glass substrate of Fujimori et al with the ion beam cleaning procedure of Veerasamy et al to create an impurity free surface which would increase the adhesion of a coating to the substrate surface.

Regarding claims 34- 35

Claims 34-53 are product by process claims wherein the patentability of the product does not depend on its method of production. "If the product in the product by process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." *See MPEP 2113.* As such, the process limitations within claims 34-35 do not provide patentable distinction absent a showing of criticality resulting in unexpected results between the claimed invention and the prior art of record.

Response to Arguments

5. Applicant's arguments, see page 4, filed November 1, 2004, with respect to claims 34-35 and 51-53 have been fully considered and are persuasive. The 35 USC 103(a) rejection of claims 34-35 and 51-53 based on Veerasamy (2002/0117250) has been withdrawn.

6. Applicant's arguments filed November 1, 2004 have been fully considered but they are not persuasive with respect to the Oath/Declaration objection, the 35 USC 102(b) rejection, and the 35 USC 103(a) rejection based on Veerasamy (US 6,312,808).

7. Applicant contends that because the address was written in on the date the declaration was signed, then the declaration is properly dated and is proper.

Any changes made in ink in the application or oath prior to signing should be initialed and dated by the applicants prior to execution of the oath or declaration. The Office will not consider whether noninitialed and/or nondated alterations were made before or after signing of the oath or declaration but will require a new oath or declaration. (*See MPEP 605.04(a).*

8. Applicant also contends that Veerasamy (US 6,312,808) is not properly used under section 103 because Veerasamy and the instant invention are commonly owned and were commonly owned at the time of invention.

This is not persuasive as Veerasamy is used under 35 USC 103(a) as of the date of publication based on 102(a), not 102(e). As such, the fact that the two inventions were commonly owned at the time of invention is not germane to the issue of whether or not Veerasamy teaches or suggest the limitations of the presently claimed invention.

9. Applicant further contends that Fujimori (US 4,368,945) fails to disclose or suggest that any surface is ion beam milled or the haze values as presently claimed.

This is not persuasive as ion beam milling a glass substrate is a process limitation. The fact that Applicant uses an ion beam milled glass substrate as part of the invention does not provide patentable distinction over Fujimori. Fujimori teaches the structure as exemplified by Applicant except for the use of an ion beam milled substrate. Absent an evidentiary showing to the contrary, the additional limitation that the substrate is ion beam milled does not provide a patent distinction over the prior art of record. In addition, Applicant has not shown that the glass structure would not have the haze value as presently claimed by Applicant.

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gwendolyn A. Blackwell-Rudasill whose telephone number is (571) 272-1533. The examiner can normally be reached on Monday - Thursday; 5:30 am - 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Deborah Jones can be reached on (571) 272-1535. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Gwendolyn A. Blackwell-Rudasill
Examiner
Art Unit 1775

gbr

DEBORAH JONES
SUPERVISORY PATENT EXAMINER